

FINAL BILL REPORT

SB 5562

C 200 L 09
Synopsis as Enacted

Brief Description: Concerning forestry operations.

Sponsors: Senators Morton, Hargrove, Jacobsen, Sheldon, Holmquist, Schoesler, Shin and Stevens.

Senate Committee on Natural Resources, Ocean & Recreation
House Committee on Agriculture & Natural Resources

Background: Current Washington law provides that certain agricultural activities and forest practices that are conducted in a manner consistent with good practices and established prior to surrounding non-agricultural and non-forestry activities are protected against nuisance lawsuits. In a nuisance lawsuit, a plaintiff may sue a defendant property owner based on the claim that the defendant makes unreasonable use of his or her property to the detriment of the plaintiff's property.

Forest practices are defined in statute as meaning any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- road and trail construction;
- harvesting, final and intermediate;
- precommercial thinning;
- reforestation;
- fertilization;
- prevention and suppression of diseases and insects;
- salvage of trees; and
- brush control.

In 2005, in the case *Alpental Community Club (ACC) v. Seattle Gymnastics Society (SGS)*, the Washington Supreme Court concluded: "The legislature enacted RCW 7.48.305 to shield from nuisance liability certain agricultural and forestry activities that had frequently been the basis for nuisance litigation brought by plaintiffs who had 'come to the nuisance.'" Here, SGS sought immunity under the statute for damage arising from its 1995 clear-cutting of its upslope property. Because the evidence failed to establish that SGS had, prior to ACC's arrival in 1967, logged the property or engaged in any other 'forest practice' preparatory to the logging, SGS was not entitled to nuisance immunity under RCW 7.48.305.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary: As used in the context of nuisance actions only, the definition of "forest practice" is broadened to mean any activity conducted on or directly pertaining to forest land, including owning land where trees may passively grow until one of the stated activities (road and trail construction, final and immediate harvesting, precommercial thinning, reforestation, fertilization, prevention and suppression of diseases and insects, salvage of trees, and brush control) is deemed timely by the owner.

Votes on Final Passage:

Senate	47	0
House	98	0

Effective: July 26, 2009